

# A Legal Study of the Decision Rendered in Al Ain Appeal No. 53-2011 on 30.03.2011

Mohammed Jamil Ak Bik  
m.bik@tamimi.com

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The decision in question deals with an insurer's pursuit of its rights of subrogation against the party responsible for damage caused to a vehicle

Briefly, the facts are that an individual had, through ADIB (the financier) purchased a Nissan car which ADIB had in turn purchased from Al Masoud Car Agency under a murabaha contract. The individual insured the vehicle with Al Wathba National Insurance Company.

Nine months following the individual's purchase, the vehicle caught fire due to an electrical short circuit and was completely destroyed. The insured was paid the value of the vehicle by the insurer who then sued both Al Masaoud Agency and ADIB to recover the value of the vehicle, being AED 168,000 plus Court fees and costs. The action was based on the right of subrogation as prescribed by Article 1030 of the UAE Civil Transactions Code.

The Court of First Instance refused to entertain the action due to the purported lack of capacity to sue on behalf of Al Wathba, the Plaintiff. Similarly, the action was dismissed on appeal on the following grounds:

1- The insurer has a right to pursue a subrogated claim against the party responsible for the damage against payments previously made to its insured pursuant to Article 1030 of the Civil Transactions Code, and to recover such indemnity payments from the party at fault who caused the damage.

2- By dismissing the action, the Court of First Instance exhausts its jurisdiction over the merits and a reversal of its decision places the merits before the Court of Appeal.

3- There is no basis for entertaining the plea that the claim is time barred under Article 555 of the Civil Transactions Code since the claim seeks recovery of the amount paid to the insured.

4- An existing defect within the meaning of Article 547 of the Civil Transactions Code is a defect which is present when the goods are delivered to the buyer or a defect that can be traced to an old problem that occurs or appears after the sale.

5- Plaintiff (insurer) has not produced any proof of the defect which caused the electrical short circuit that ignited the vehicle fire - whether it was a pre-existing defect in the vehicle that was introduced during manufacture or a defect that existed prior to purchase.

6- A defect existing in the sold item prior to sale cannot be assumed and must be proved. Plaintiff (insurer) has not proven that the defect is a manufacturing defect or had existed in the vehicle prior to the sale. The seller cannot therefore be held liable for its value.

**Opinion:**

Subrogation commonly arises in relation to motor vehicle purchase contracts and policies of insurance.

Spontaneous accidents involving vehicles, machinery etc. are common types of claims.

Therefore, the Al Ain Court, which is part of the Abu Dhabi Judicial Department, has laid down important principles which burden the plaintiff with the onus of proving a pre-existing defect as follows:

- 1- That the vehicle suffered loss caused by fire due to a defect therein
- 2- That the defect is a pre-existing defect introduced during manufacture or existing in the vehicle prior to purchase
- 3- And the onus of proving a pre-existing defect is on Plaintiff whether the vehicle owner or the subrogee.